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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,994	01/02/2004	Joseph M. Jarke	RJPD:006US	5484
32425	7590	09/14/2005	EXAMINER	
FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/750,994

**Applicant(s)**

JARKE ET AL.

**Examiner**

Son T. Nguyen

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12-20 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 6-7** are rejected under 35 U.S.C. 102(b) as being anticipated by Agerley et al. (4586464).

For claim 6, Agerley et al. teach an apparatus attachable to a container useful for watering an animal, the apparatus comprising: a base cap (reference numerals as designated in the above claim 1) removably attachable to the container, the base cap having a base cap flow aperture (reference numerals as designated in the above claim 1); and a flow activation member (reference numerals as designated in the above claim 1) configured to fit over a portion of the base cap (the portion is member 5,12,5a,13, see fig. 1b) and being removably attachable to the base cap, the flow activation member having a lever 8 and a material that defines a flow activation member flow aperture (reference numerals as designated in the above claim 1), the lever being integral (as in together as a whole unit) with the material that defines the flow activation member flow aperture, the lever having a deactivated position and an activated position.

For claim 7, Agerley et al. teach where the apparatus further comprises: an outer cap (reference numerals as designated in the above claim 1) removably attachable to the base cap, the outer cap having a lever aperture (reference numerals as designated

in the above claim 1) through which the lever can pass, the outer cap also being configured to fit over a portion of the base cap (see fig. 4, the portion would be member 5,12,13,5a) and a portion of the flow activation member (see fig. 4); and where the base cap is threaded.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-5,8-9,12-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Agerley et al. (as above).

For claim 1, Agerley et al. teach an apparatus attachable to a container (col. 2, line 29, the source being the container or the pipe or hose can be considered a container of water) useful for watering an animal, the apparatus comprising: a base cap 1-4,4a-c,5a,12,13 removably attachable to the container, the base cap having a base cap flow aperture 12,13,15; and a flow activation member 7,8,9,10,10a removably attachable to the base cap, the flow activation member having a triggering mechanism 8 and a flow activation member flow aperture (the openings in refs. 7 & 10a). However, Agerley et al. are silent about the flow activation member being made from a rubber-like material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the flow activation member of Agerley et al. out of a rubber-like material, since it has been held to be within the general skill of a worker

in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. In re Leshin, 125 USPQ 416.

For claim 2, Agerley et al. teach an outer cap 20 removably attachable to the base cap, the outer cap having an aperture 22 through which the triggering mechanism can pass (see fig. 4).

For claim 3, Agerley et al. teach where the base cap is threaded (see fig. 1a, ref. 4).

For claim 4, Agerley et al. teach where the base cap includes multiple base cap flow apertures (on members 2,4a,12,13,15).

For claim 5, Agerley et al. teach where the flow activation member includes multiple flow activation member flow apertures (on members 7,10,10a).

For claim 8, Agerley et al. teach where the base cap includes multiple base cap flow apertures , and the flow activation member includes multiple flow activation member flow apertures.

For claim 9, Agerley et al. teach the already discussed limitation above, except for the base cap being internally threaded so as to be removably attachable to an externally threaded portion of the container because Agerley et al. teach the opposite, i.e. the cap being externally threaded. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cap of Agerley et al. internally threaded, since it is has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167.

For claims 12,16 & 17, see claims 1,6. The triggering mechanism is the same as the lever in claim 6 and the elastic material is as discussed in claim 1.

For claim 13, see claim 2.

For claim 14, see claim 3.

For claim 15, see claim 4.

For claim 18, in addition to the already discussed limitation above, Agerley et al. further teach the apparatus being configured such that when the apparatus is attached to the container, the container is filled with water, and multiple flow activation member flow apertures are opened, at least some water will flow through the opened flow activation member flow apertures under the force of gravity alone.

For claim 19, see claim 3. Note, the outer cap of Agerley is configured to fit over a portion of the base cap.

For claim 20, see claim 4.

#### ***Allowable Subject Matter***

5. **Claims 10 & 11** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

6. Applicant's arguments filed 7/5/05 have been fully considered but they are not persuasive.

**Applicant argued that Agerley does not teach or suggest a flow activation member that is removably attachable to the claimed base cap, that has a**

**triggering mechanism and a flow activation member flow aperture, and that is made from a rubber-like material.**

It is true that Agerley et al. do not teach a rubber-like material for the flow activation member. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the flow activation member of Agerley et al. out of a rubber-like material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. In re Leshin, 125 USPQ 416. In addition, plastic and rubber-like material are notoriously well known in the art to be used for animal drinker because of cheaper cost, less corrosive and cleaner than other material, thus, it would be obvious to use plastic or rubber-like material for the reasons as listed.

**Applicant argued that Agerley does not teach or suggest a lever that is integral with material that defines a flow activation member flow aperture.**

The word integral means formed as a unit with another part (Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> edition), which the lever is integral (as a unit making up the apparatus) with the material that defines the flow activation member flow aperture of Agerley et al.

**Applicant argued that Upper housing element 4 of Agerley is externally threaded, and there is no suggestion in Agerley to internally thread upper housing element 4. Accordingly, claim 9 and its dependent claims are patentable over Agerley.**

Reversing externally thread housing element of Agerley with internally threading the housing would be a mere reversal of parts as stated above in the rejection based on In re Einstein, 8 USPQ 167.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn